IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5125 OF 2004

Rajubhai @ Jacob Mathew Pinto & Anr. .. Applicants.

V/s.

The State of Maharashtra .. Respondent.

Shri P.I. Ubharey i/by Akhilesh K. Dubey for Applicants.
Shri D.R. More, APP for State.

CORAM : A.M.KHANWILKAR, J.
DATED : 23.11.2004

PC :-

. Heard counsel for the parties. Perused the record.

. The Applicants were arrested on 22nd July, 2004, as no chargesheet was filed within the stipulated period of 90 days. Application under section 167 (2) of the Criminal Procedure Code was filed on behalf of the Applicants for being released on bail on 21st October, 2004 at 11 a.m.. Indeed, the prosecution filed the chargesheet on the same day at about 3 p.m.. These are the admitted facts. Thus time taken for filing of the chargesheet from the date of arrest, it cannot be disputed that the chargesheet

has been filed after 90 days; but before the expiry of the filing of the chargesheet the applicants admittedly preferred Application for being released on bail under section 167(2) of the Code on 21st October, 2004. The fact that the chargesheet has been filed on the same day, which is posterior in point of time will make no difference to the legal position. Applicants have rightly placed reliance on the decision of the Apex Court - 2001 Supreme Court Cases (Cri) 760 in the case of Uday Mohanlal Acharya vs. State of Maharashtra as well as on the decision of our High Court, which directly deals with this aspect, reported in 1999 (2) Mah. LJ pg-554, in the case of Ramesh Madhukar v/s. State of Maharashtra. Viewed in this perspective, the Application for bail as filed on behalf of the Applicants under section 167(2) of the Code ought to have succeeded. This was the only question which was required to be considered by the court below. However, no clear adjudication on this issue has been undertaken by the lower court. Accordingly, this Application succeeds on the following terms :-

i) The Applicants are directed to be released on bail on the ground of default under section 167 (2) of

the Code on executing bond in the sum of Rs. 50,000/- with two local sureties in the like amount. The Applicants to be provisionally released on cash bail and the formality of executing bonds and providing sureties to be complied within one week, which is a condition for grant of bail.

ii) The Applicants shall not leave Mumbai without prior intimation to the investigating officer as well as to the trial Court.

iii) The Applicants shall not influence the prosecution witness or tamper the prosecution evidence in any manner whatsoever.

. Ordered accordingly.

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